



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,916	04/15/2004	M. Samy Abdou	17348-002001	8930

20985 7590 04/05/2006

FISH & RICHARDSON, PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

ARAJ, MICHAEL J

ART UNIT	PAPER NUMBER
----------	--------------

3733

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/825,916	Applicant(s) ABDOU, M. SAMY	
	Examiner Michael J. Araj	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>see continuation</u> . | 6) <input type="checkbox"/> Other: ____. |

11/21/05, 11/14/05, 5/3/05, 2/14/05

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 8, 10, 11, 18, 19 and 21 are rejected, as understood, under 35 U.S.C. 102(b) as being anticipated by Yuan et al. (U.S. Patent No. 5,681,312).

Yuan et al. disclose a bone fixation device comprising a first member (14) interconnected to a second member (12) by an elongate rod (10), and an adjustor member that transition between a first and second distance. The first distance is less than the second distance and the range of motion is linear and curved by looking at the underside of the device. Also disclosed is the first member includes a modular coupler (10) that can mate with a second bone fixation.

Claims 1-8 and 10-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Kuntz (U.S. Patent No. 6,663,631).

Kuntz discloses a bone fixation device comprising a first member (20) interconnected to a second member (18) and an adjustor member (16) that transitions between a first and second distance. The first distance is less than the second distance and the range of motion is linear. The first member includes a distraction screw coupler that permits the first member to be coupled to a distraction screw while the first member is connected to the first vertebra. The screw coupler comprises a borehole sized to receive there through a distraction screw (32) while the borehole can mate with a portion of the distraction screw. Also disclosed is the first member includes a modular coupler (10) that can made with a second bone fixation. The device comprise a borehole extending through the first member that is configured to mate with at least a portion of the second bone fixation device. This borehole is also configured to receive a distraction screw such that the second member or first vertebra can be coupled to a distraction screw while the second member is connected to the second vertebra. This device also has the ability to be modularly attached to a third bone fixation device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

Art Unit: 3733

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MJA


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER